

(2011) 08 KL CK 0097

In the High Court Of Kerala

Case No : Review Petition No. 337 of 2011 in S. T. RV. No. 36 of 2007

Kail Ltd. (Formerly known as Kitchen Appliances India Ltd.)	APPELLANT
Vs	
State of Kerala	RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5(2)

Citation : (2012) 52 VST 245

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : K. Ramakumar, SR and E.P. Govindan, for the Appellant; Mohammed Rafiq, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The review petitioner is a 100 per cent subsidiary of M/s. Videocon International Ltd., engaged in marketing of products like television, washing machine, etc., in the brand name "Sansui". The products manufactured in the brand name "Sansui" were brought to Kerala and sold by M/s. Videocon International Ltd., to the review petitioner, which in turn made sales of the products to the market. Section 5(2) of the Kerala General Sales Tax Act (hereinafter referred to as "the Act", for short), the constitutional validity of which is upheld by this court, authorises levy of tax on branded goods at the point of sale by the brand name holders treating such sales as deemed first sales by virtue of the fiction available u/s 5(2) of the Act. From the very beginning the review petitioner took the stand that it is not a subsidiary of M/s. Videocon International Ltd., which was stated to be the exclusive brand name holder of the products. However during hearing of the revision case, we noticed that sufficient materials are on record to establish that the review petitioner is a subsidiary of M/s. Videocon International Ltd., and it is the brand name holder of "Sansui" in India. Consequently, we upheld the assessment in the revision case, against which the petitioner filed SLP before the Supreme Court. However, without

pressing the SLP, the review petitioner got it withdrawn with permission to file appropriate petition before this court. This review petition is filed after withdrawing the SLP filed before the Supreme Court. It is seen from the order of the honourable Supreme Court that the Supreme Court has not considered the case on merit. In the first round of hearing of the review petition, we felt that the review petitioner is trying to mislead this court by contending that it is not a subsidiary of M/s. Videocon International Ltd. We therefore, directed the review petitioner to" file an affidavit from any of the members of the Dhoot family, who hold controlling interest in the review petitioner as well as in M/s. Videocon International Limited, stating the nature of relationship between M/s. Videocon International Limited and M/s. Kitchen Appliances (India) Ltd., the review petitioner herein. It was specifically stated that any effort to mislead the court will lead to dismissal of the review petition with heavy cost. In the affidavit filed by Shri Venugopal, S/o. Late Shri Nandlal Dhoot, pursuant to our above order, though he has raised a contention that strictly the review petitioner is not a subsidiary of M/s. Videocon International Ltd., under the definition clause of the Companies Act, he has honestly admitted the following in paragraph 2 of the affidavit.

I say and submit that Kitchen Appliances (India) Ltd., now name changed to KAIL Ltd., is a public limited company and Dhoot family, directly or indirectly, through various group companies are having shareholding control in respondent-company as per the facts and various filings with the regulatory authorities.

2. Further statement in paragraph 5 of the affidavit is as follows :

I further say that Dhoot brothers are also promoters of Videocon International Ltd.

3. Similarly in paragraph 6 it is conceded that, Videocon International Ltd. and KAIL Limited as part of Videocon group. The fact that during 1999-2000, the review petitioner had manufactured 2057 colour television sets and 961 black and white television sets in "Sansui" brand at Calcutta factory is also conceded.

4. We do not know what more is required than what is stated in the affidavit by the director to establish that the first sale made between the two group companies is to avoid the incidence of sales, tax payable in Kerala u/s 5(2) of the Act.

5. The learned Government Pleader has produced the, website publication of Videocon group for the purpose of issue of convertible bonds in Singapore. In the said publication affiliated group is defined as the Wider Videocon group including Videocon Appliances Limited, Videocon Communications Limited, Applicomp India Limited, Kitchen Appliances India Limited, Millennium Appliances (India) Limited and their consolidated subsidiaries. Similar connected matters defined as affiliated group are Dhoot family and their related parties as defined in the accounting standard 18 issued by the ICAI. Dhoot family is also defined in the publication as Mr. V. N. Dhoot, Mr. P. N. Dhoot, Mr. R. N. Dhoot and their blood

and marital relations and companies or other entities outside the Wider Videocon Group owned and/or controlled directly or indirectly by all or any such persons. At page 110 of the website publication "obtained and produced by the learned Government Pleader, it is seen that as at June 30, 2006, 100 per cent shares of Kitchen Appliances India Ltd., are held by the Dhoot family. It is further stated that the review petitioner was established to manufacture small appliances and manufactures colour TVs, refrigerators and washing machines and sells on an OEM basis and under the "Kelvinator" and "Sansui" brands and sells the majority of the products to third parties. What is clear from the above is that the review petitioner was engaged in manufacturing of all products for "Sansui" brand and the said brand name itself is acquired by M/s. Videocon International Ltd., which in turn gave the brand name right to the review petitioner. In the companies controlled by the Dhoot family charted at page 109 of the website publication, Kitchen Appliances (India) Ltd., is shown as 100 per cent owned by the Dhoot family.

6. From the above, what is clear is that the beneficiaries of the review petitioner and M/s. Videocon International Ltd., are the family members and group companies under the control of the Dhoot family. We, therefore, do not find any ground to review our judgment See *State of Kerala v. Kitchen Appliances India Ltd.* [2011] 40 VST 191 (Ker). which has been rendered after taking into account the fact that real sales of the products to the market under brand name were made by the review petitioner that attract tax u/s 5(2) of the Act. In other words, the inter se first sale between the group companies under the control of the same family was only to reduce tax liability and was rightly ignored by the assessing officer by levying tax on the review petitioner u/s 5(2) when they made real sales to the market.

7. In fact, learned Government Pleader has also brought to our notice our subsequent judgment in *S. T. Rev. No. 67 of 2011 in Elite Foods (P.) Ltd. v. State of Kerala* [2012] 52 VST 241 (Ker), wherein we have specifically held that the objective of section 5(2) is to assess the sale of branded goods by the brand name holder to the market and inter se sale between brand name holders are not intended to be covered by section 5(2) of the Act. In view of the above judgment, we hold that there is no scope for further enquiry in terms of the judgment under review and irrespective of the margin charged by the first seller, Videocon Industries Ltd., on sales to the review petitioner, sales by review petitioner was rightly assessed u/s 5(2) of the Act. Consequently, this review petition is devoid of any merit and is only to be dismissed and we do so.

8. We notice that even at the review stage, the review petitioner was not willing to concede the true facts before this court. Even after threatening the review petitioner that the court will order heavy cost for trying to mislead the court, only technical arguments are raised without honestly conceding that the beneficiaries of the review petitioner and the holding company are the members of the Dhoot family which fact stands admitted in the affidavit filed by the petitioner. We,

therefore, feel the review petitioner is liable to pay cost in this matter. Accordingly, we impose a cost of Rs. 25,000 (rupees twenty five thousand only) on the review petitioner with a direction to them to deposit the same before the High Court Legal Services Committee and produce the receipt in court within 30 days from now.

9. The registry will report payment to the court. This review petition is dismissed with cost as stated above.